



INTERNATIONAL
HELLENIC
UNIVERSITY

Music Performers' Rights and their protection under Greek Copyright Law

Marilena J. Liakopoulou

SCHOOL OF HUMANITIES

A thesis submitted for the degree of

Master of Arts(MA) in Art, Law and Economy

February 2015

Thessaloniki – Greece

Student Name: Marilena Liakopoulou

SID: 2202130020

Supervisor: Prof. Irini Stamatoudi

I hereby declare that the work submitted is mine and that where I have made use of another's work, I have attributed the source(s) according to the Regulations set in the Student's Handbook.

© 2015-02-10, Marilena Liakopoulou, 2202130020

No part of this dissertation may be copied, reproduced or transmitted without the author's prior permission.

February 2015

Thessaloniki - Greece

Abstract

This dissertation was written as part of the MA in Art, Law & Economy at the International Hellenic University.

This study aims to examine the legal protection for the performers of musical works under the Greek Copyright Act, and the Act's implementation in Greece. Drawing conclusions from the global contemporary theory on copyright and performers' rights, concepts of the relative international treaties, greek and international jurisprudence, and social anthropology and musicology, the study will also attempt to explain the rationale of this kind of protection of musicians, observe the effect of the greek provisions on the practical and economical functions of music industries, explain the operation of collecting societies and propose a reconsideration of related rights towards a more copyright-oriented right upon the work.

Acknowledgements

I would like to thank my dear professors in Law at Aristotle University of Thessaloniki, Prof. Dr. Athanasios Kaissis and Ass. Prof. Miltiadis Sarigiannidis, for their inspiration and encouragement in my decision to pursue these postgraduate studies at this stage of my life. I owe particular thanks to my supervisor Dr.Irini Stamatoudi for her valuable advice, her brilliant and analytical line of thought and especially for helping me stay in track.

Table of Contents

Abstract.....	iii
Acknowledgements	v
Table of Contents	vii
Introduction	1
<u>Chapter 1. Who is a performer in music</u>.....	3
1.1 What constitutes a “musical performance” – Interpretation or execution?	3
1.2. The position of the musical performer in a socio-economic context	5
1.3. The musical performer seen from a legal spectrum	6
1.4. The rationale behind the performer’s protection. Relationship with copyright..	9
1.5. Protection of musical performers in the Greek legislation	12
<u>Chapter 2. Performers’ rights</u>.....	13
2.1. General	13
2.2. Economic rights.....	15
2.2 Moral rights	18
2.3 Duration – The Term Directive 2011/77/EU	21
2.4. Licenses and Contracts	22
<u>Chapter 3. Infringement of music performers’ rights</u>	23
3.1. Acts of infringement-Limitations and exceptions	23
3.2 Enforcement and Sanctions	25
<u>Chapter 4. Collecting Societies</u>.....	28
4.1 The function and operation of Collective Management Societies.....	28
4.2. Equitable remuneration.....	31

Conclusion.....	33
Bibliography	35
Bibliography and works cited.....	35
SOURCES (Legal Texts- Legislation-Case-Law)	36

Introduction

Music has been an important form of human expression and a means of communication between people, since the early eve of mankind. In every particular era of the World's History, from the Stone Ages' "lithophones", through the Middle Ages' minstrels to the modern-era digital ecosystem, Music, as a form of Art, is always present and marks each society's culture. The status of the musician as an artist and professional may have changed and evolved through the centuries, going from kings' servants to divas on stage, but the reality is this: musicians are also professionals, as everyone, who need to live by their *métier*.

For long, the protection of performer-musicians' rights had not been an object of a special branch of law, contrary to the protection given to the composers (authors) through Copyright Acts and IP rights legislations. And that was merely because, often, the same person who composed the music, the "author", was also the same person who performed it. Incorporating both these qualities- composer and performer- in the same person, the need to protect the author's economical interests was overlapping the protection of the performer. But, little by little, beginning in the 19th century, the musical tradition changed as to favor the *virtuosi* and soloists, who not just executed the works of the composers, but gave them a second birth on stage. If we add to this fact the enormous progress in science and technology, namely the recording techniques and internet, that took place in the 20th century, and which has allowed to "fixate" the fleeting and ephemeral nature of a live performance to a solid medium, and which affected all the music- related professions, the need to protect the music performers is, now, more imperative than ever.

In this study we will examine the protection for music performers in Greece, under the current Greek Copyright Act N.2121/1993. At first we shall try to establish the nature of a musical performance and whether or not it constitutes a “work” by itself, seen by two perspectives: the artistic and the legal. Once the rationale for this protection is established, we will examine and analyze the rights that the music performer can exercise upon his performance, both in the case of a legal and illegal exploitation of his labor. We shall then see what constitutes an infringement of these rights and when and how the law can protect the music performer against these infringements.

1. Who is a performer in music

1.1 What constitutes a “musical performance” – Interpretation or execution?

Music is a means of expression and communication. Many have described music as “language”¹. To understand the process of performing a piece, one must value the factor “time”. The musician is called to act with accuracy and precision, executing the musical text and following the written directions of the composer within a certain fragment of given time, filling with sounds a succession of seconds that form a bigger line; and making this line a continuation of another musical phrase, never cutting the linear aspect of running time but rather transforming it into measured rhythm, and it is that succession of harmonies within rhythm that finally reaches the ears of the audience as music. However detailed the writing of the composer is, however carefully the annotations and guidelines may be stated, however clear may the indications of tempi, nuances, accents etc. be written, one can always find many hidden elements that make every performance a unique “translation” of the composer’s work². In other words, the performer gives the “soulless” musical text a second birth.

What distinguishes a mere “execution” of a musical text from an “interpretation” is the degree of implication of the personal sentiments, taste and training of the performer. As Igor Stravinsky has very eloquently stated “(...) *every interpreter is an executer, the reverse is not always true*”³. By that we assume that, to be a music executer requires training and advanced musical skills, but to be able to “interpret” a musical work requires more than that.

¹ Adorno, Theodor. "Quasi Una Fantasia: Essays on Modern Music." Trans. Rodney Livingstone. *SubStance* 24.3 (1995): 121. Web.

² Stravinsky, Igor. *Mousiki Poiitiki.(Poetics of Music)* Athens: Nefeli, 1980. Print p.113.

³ *Idem*.

The interpreter tries to understand the composer's intentions, using the filter of his own experience and understanding⁴. Of course, he is not granted the right to alter the meaning of the composer's intentions, or to override the composer's directions, much as a translator isn't justified when he gives us an intentionally altered version of the original text, but, we do not expect an interpreter to deny his personality, for "fidelity's" sake only, either.⁵ Music is always alive, and it shouldn't be treated as a "museum piece". And the element which makes music alive is the personality of the people who play it, together with the positive feedback of the audience, that can transcend the sphere of everyday reality, even if for the few minutes that the piece lasts.

A very interesting, although exaggerated, opportunity to understand the significance of the contribution of the performer to the final acceptance of the composer's work came up in a legal dispute about an alleged infringement of John Cage's «4'33''»⁶:

John Cage was an American composer who, by 1950's, was placed among the avant-garde of his peers and had already gained the reputation of a musical innovator. In 1952, he wrote a piece for piano which he named "4'33'" ("*four minutes and thirty-three seconds*"). The piece was written on an ordinary music staff and consisted of three distinct movements. The controversial thing about it is that, for the four minutes and thirty-three seconds of its duration, the performer must not play at all. He must, of course follow the composer's directions which are expressly written on the score. Many say that this is a piece about silence. Cage himself denied it; instead he said that his intention was to show how 'meaning' is created in a work of art, and that silence can be 'interpreted' in many ways⁷. The strange thing is that more than half a century later, upon the event of a legal dispute on copyright⁸ this approach was justified when, for the purpose of the court's examination of evidence to determine whether the

⁴ Brendel, Alfred. *Musical Thoughts & Afterthoughts*. London: Robson, 1976. Print. p.25.

⁵ *Idem*.

⁶ Peters editions, the music publishing house that acted on behalf of John Cage's estate, turned versus composer M. Batt, accusing him of infringement on Cage's piece. The controversy did not reach the court, because it was settled in a pre-trial settlement. The respondent M.Batt paid an undisclosed six-figure sum to the John Cage Trust.

⁷ Solomon, Larry J. "The Sounds of Silence." *4'33"*, 1998, rev.2002. Web.25 Jan. 2015.

⁸ See ftn.6 *supra*.

respondent, the composer Mike Batt, had infringed the copyright of Cage's "4'33'", two different performances of the piece were staged and it was established that every piece was different, due, among other elements, to its distinct and unique performance! In fact, any musician can play Cage's piece, even the BBC Symphony Orchestra performed it in January, 2004.⁹

A performer is not to be considered as a mere resonator, through which the composer's music can be heard. No one enjoys a rendition of a musical composition given by a computerized machine, because the lack of "musicality" is extremely evident. In analogy, no one appreciates a musician who plays "just" the notes he reads on the paper. Glen Gould, the famous Canadian pianist of recent times, upholds that "it is essential to contribute to a new envision of the work (...) to re-create the work, and to transform the act of interpretation to an act of composition".¹⁰

Many young musicians assist seminars and master-classes given by famous performers, who in their every advice and guidance underline the significance of the application of the player's musical personality in the final outcome of the piece. And many were the talented and brilliant performers who marked with their personality and definite style a whole era of music making.¹¹

The scope in this analysis of a musical performance is to stretch out the importance of the contribution of the performer in the musical work. It is generally accepted, under the legal and economic prism, that only composers can take the merit of a great-inspired work, but in many cases it is the ability and musical genius of its interpreter that promotes the popularity of the piece.

1.2. The position of the musical performer in a socio-economic context

The musical performer is a professional who earns his living exclusively out of his musical skills. To be a successful musician, one has to go through long years of practice. In classical music, instrumentalists begin the practice of an instrument since

⁹ See uploaded video of this performance on the BBC webpage at bbc.co.uk.

¹⁰ Gould, Glenn, and Bruno Monsaingeon. *Non, Je Ne Suis Pas Du Tout Un Excentrique*. Paris: Fayard, 1986. Print. p.137.

¹¹ We can indicatively mention the interpretations of Maria Callas, S. Richter, M. Rostropovich, G. Gould, J. Menuhin, A. Rubinstein and many more, that put their stamp in a whole era of music performing that reached the sphere of the legendary.

early childhood, and lead their high school years with at least 4-5 hours daily afterschool practice, aiming to the completion of their musical studies in college. In popular music, singers and instrumentalists also keep practicing from their youth. Like in dancing and sports, music has to be learned from early age, when the muscles and tendons of the body are still supple and perfectible. It is an occupation that one cannot undertake overnight, and this investment in time and hard work is rarely compensated.

When the time comes, at last, for a musician to start a career as a professional, his main income will derive from fees for his live performances. Live performances are his most direct, immediate and substantial income stream, whether he is a singer, a soloist, or member of a musical group. The more a musician is known, the more proposals for engagements he receives. In our days, for a musician to gain reputation and break the limits of his hometown, records and internet are the essential tools to offer him the recognition he needs to book even more live performances, and augment his performance fees. The music industry of the 20th century worked with agents and impresarios; it was their work to use publicity to promote the profile of the artist, so as to come off with more engagements. Now, in the digital era, things are less complicated, since all a musician has to do is to upload his performance on the internet and watch his reputation grow. But, exactly at this point there is a catch: the musician must make sure that it is he who is in the receiving end of the income sources that he is trying to pull out. Evermore, when access to one's work is so easily obtained, and the dissemination of music so massive, the work itself loses its significance and value. Like Janus, the internet has two faces, the good and the bad, the convenient and the fraudulent.

1.3. The musical performer seen from a legal spectrum

Although the term “performer” in the social context may be conceived broadly, most of the legal instruments, and especially those who provide this category of artists

with related rights, offer a direct definition of the word. In the Rome Convention¹² of 1961, Article 3(a) cites:

“performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works;

Accordingly, the definition passed in the text of WPPT¹³ of 1996:

“performers” are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

It is interesting to note that in the early greek legislation concerning matters of copyright, the article 14 of the 1920's Law on copyright, deals with audiovisual works and addresses both musician and actors as “authors” and grants them the same protection as such.¹⁴ These provisions were active until their abolishment by the current Act in 1993. One can dare assume, over this fact, that the greek legislator was ahead of their time at privileging performers with equal rights as authors upon their work.¹⁵

We have already mentioned the musicologists' distinction between an executer and an interpreter¹⁶. In legal terminology, both terms are valid, (*artiste exécutant/ interprète* in French- *μουσικός εκτελεστής/ερμηνευτής* in greek) describing all music performers. General theory has in separate occasions characterized as “interpreters” the persons who do not take an active part in the moment of the performance, but rather lead it with their instructions and teachings, such as the choir and orchestra conductors or the directors of theatrical plays opposed to choir singers and orchestra musicians or actors who are the “executers”¹⁷. Besides, attempts have been made to categorise the performers/executers/interprets, on the basis of

¹² International Convention for the Protection of Performers, Producers of Phonograms & Broadcasting Organisations (done at Rome on October 26, 1961), article 3(a).

¹³ WIPO Performances and Phonograms Treaty (WPPT) adopted in Geneva on December 20, 1996, article 2(a).

¹⁴ Law No.2387/1920, amended by Law No.1597/1986, articles 1 &14.

¹⁵ Kyprouli, Konstantia P. *Το συγγενικό δικαίωμα των ερμηνευτών εκτελεστών καλλιτεχνών (Related Rights of Performers)*. Athens-Thessaloniki: Sakkoulas, 2000. Print.pp.63,64.

¹⁶ See *supra* under §1.1.

¹⁷ *Guide to the Rome Convention and to the Phonograms Convention*. Geneva: World Intellectual Property Organization, 1981. Print. para 3.3.

quantitative or qualitative criteria, (e.g. the work of orchestra conductor as “interpretation” and subsequently the work of the musicians of the orchestra as “execution”), but the Law is explicit: *“the protection afforded under this Law shall apply regardless of the value of the work and its destination (....)”*¹⁸.

It is indeed not accepted in Law, under the principles of equality and value-neutrality, to discriminate applying quantitative and qualitative criteria. The subjectivity with which one may categorize every musician’s contribution in an orchestra (is the percussionist entitled to lesser protection than the first violin players?) has neither legal nor musicological support. Of course, no one can argue that musically-wise the soloist of a violin concerto, together with the conductor may have a larger and more significant part in the whole of the work, in analogy to the protagonist and director of a theatrical play compared to the secondary characters. But Copyright Law, accepting and adopting the Theory of Unity of Art, recognises every performer who contributes to the final outcome as having equal, in the measure of his contribution, rights.

A cornerstone case that marked the acknowledgment of rights to a performer was the notorious “affair Furtwaengler”¹⁹. During World War II, the prominent orchestra conductor Wilhelm Furtwaengler, who was then principal conductor of the Vienna Philharmonic, conducted this orchestra on a performance of the 3rd Beethoven Symphony “Eroica” for the Radio of the 3rd Reich to be broadcasted. (It was usual practise in those years, when the recordings were scarce and expensive and the concerts took place mostly in the big cities with little accessibility for the layman, to give live concerts in the buildings of the Radio Broadcasting Corporations, and these concerts could be enjoyed broadly, on a nation-scale by everyone who owned a radio post.) The magnetic tapes of this specific performance remained in the premises of the Radio Broadcasting Corporation in Berlin and, after the war and the defeat of the Nazis, the authorities of East Germany (DDR) confiscated the tapes and passed them on to the American phonogram company “Urania Records Inc.”, with the agreement

¹⁸ See article 2(4) of Law No.2121/1993.

¹⁹ “Affaire Furtwaengler” Civ.Seine, 19/12/1953, J.C.P.1954 and Cass.Civ.4-1-1964, J.67.

to produce a record of this rendition of Beethoven's Symphony. In fact, the record was made and distributed in France by the record company "Thalia disque". Let it be noted, that neither Furtwaengler, nor Vienna Philharmonic, which also was a legal entity, were asked for permission. Instead, Furtwaengler had concluded a contract with another record company, the French "La Voix de Son Maître", for the recording of the same Symphony, performed by himself and the Vienna Philharmonic. This record was also distributed in France. The conductor filed an injunction²⁰ to have "Urania" and "Thalia" withdraw the illegal recordings from the French market, which the court approved and ordered, based on the following thought: the fact that the conductor had, at a previous time, given his consent for his performance to be broadcasted, does not imply that the same permission is given for its fixation and distribution on records, and that the performer may enjoy the moral right to be able to decide whether a performance should be exploited and how. Further more, in the process of the case through the second degree and the appeal of the defendants, the Court de Cassation (the French Supreme Court) ruled for the first time that "a performer is entitled to prohibit any use of his performance other than that authorized by him(...)"²¹, granting thus similar to authors' moral rights on their work.

1.4. The rationale behind the performer's protection. Relationship with copyright

This decision of the french Supreme Court fired many reactions among the theoreticians. The french ruling spoke for the first time about the performer's « work »²². In a way it recognised that a musician's performance had all those elements that qualify as a work of intellect. Therefore, it was clear that the performer acquired an absolute right over it, which allowed him to use it any way he thinks best.

Performer's rights had not existed before the end of the 19th century, when the musicians gave only live performances and the only income out of the performance was the artists' fee or the admission ticket. With the apparition of the first recording instruments and the fixation of the performance on record, the

²⁰ Civ.Seine, 19/12/1953, J.C.P.1954.

²¹ Cass.Civ.4-1-1964, J.67.

²² Badinter, commentaire sur l'affaire Furtwangler J.C.P. 1964, I, v.1844, p.332.

“phonogram”, new ways of economic exploitation were introduced, and the protection of the performer’s rights emerged. In fact, once a performance was recorded in a phonogram, the artist could lose the control over it, since the phonogram was now able to be multiplied, sold and used in many ways the artist could not have foreseen in the recording contract. Unlike the composer who, through copyright could follow his work, the performers lost the legal link that connected them to their effort. So, gradually, a bunch of “*rights neighbouring on copyright*” were introduced in the international and national legislations.

Neighbouring rights for performers provide a protection close to copyright, but evidently lesser. Up until recently, the differences comprised the term of protection, which for the copyright was longer. Now, a recent EU Directive²³ has augmented the term of protection, in some cases²⁴, to 70 years instead of 50, thus equating it with the protection of copyright. It seems that the general trend in EU is to bring more copyright-oriented provisions for the neighbouring rights as well. The difference that is not yet overcome is the debate whether a performance constitutes a “work” *en soi*. In copyright law, to qualify as “work”, a creation of intellect must meet the criterion of “originality”. Many deny that a performance may be an original work, although, as already aforementioned²⁵, it takes a lot of intellectual effort to accomplish it. The supporters of this theory do not admit that the aesthetic and artistic effort of the performer constitutes a separate intellectual labour, but it is rather a medium, through which the intentions of the composer can be communicated to the audience. But, so is the translation of a literary work. In the same way, the translator communicates to the readers the writer’s words, in the language that they can comprehend. And it is true, that translations are considered as “original” work, in their turn²⁶. So, why, analogically, cannot this musical “translation”, that the performer offers to the audience, qualify as “original work”? The philosopher and musicologist Theodore Adorno states that the analogy of music and language is direct in many

²³ Directive 2011/77/EU (amending the Directive 2006/116/EC on the term of protection of copyright and certain related rights) Article 2.

²⁴ See *infra* under 2.3.

²⁵ see para1.1 *supra*.

²⁶ Law No.2121/1993 article 2(2).

ways²⁷. "Musical interpretation is performance, which, as synthesis, retains the similarity to language (...) ²⁸". Another conceptual point in this line of thought is that, as in language, music consists of sounds. These sounds can be conceived through the written text only by the initiated in reading the musical *tabulatura*²⁹. The "decoding" of the written text to notes can be described as "translation".

Moreover, a performer is linked to his performance in a way that it cannot stand separate from him. If the element of originality is confirmed by the fact that the work is statistically unique, then every performance, since it only happens once and can never be repeated again by the same musician- let alone another person- may qualify as "original". Another argument, borrowed from the world of visual arts could be, that, in the same manner as a painter or a sculptor uses the materials in his possession to "create" a work of art, a music performer can use the musical text as a material, which combined with the atmosphere of the concert hall, the acoustics, the timbre of the particular instrument and the energy of the audience, can transform the ephemeral and fleeting of his performance into a unique and original work, that, once fixated, it bears his own signature.

So one may wonder why the performers have not yet been granted rights equal to copyright. The answer may be found in the need of practicality that runs the copyright law. This is the argument used by those who are against the simulation of the performers' rights to copyright. It is true, that performers need to be able to decide if, when, and how to exploit their recordings and this right is granted to them. In the course of those transactions, many other right holders are implicated: composers-if the work is still protected-, record producers, broadcasting corporations, e.a. Authors, on one hand, and record producers, on the other, are generally opposed to granting copyright to performers for their own self-evident reasons: they both do not want to share the revenues of the work in the long run. They believe that a copyright-like right might slow down the contracts, and bring several clashes of

²⁷ Adorno, Theodor. "Quasi Una Fantasia: Essays on Modern Music." *Music and Language* Trans. Rodney Livingstone. *SubStance* 24.3 (1995): 121. Web.

²⁸ Id.

²⁹ "Tabulatura" is the Italian term to describe an early form of musical notation for the west-european music.

interest that would not benefit the facilitation of transactions. The anti-argument in this position is that, on the contrary, the economic “emancipation” of performers can be advantageous to both composers and producers, for it will strengthen the market and make it less vulnerable to piracy, bootlegging and other forms of revenue leaks.

Besides, the fact that the digital world is evolving and changing in rapid rhythms, the whole aspect of copyright and related rights need be reassessed on a standard basis. It would not seem strange, if the call of the markets and of the digital environment overbalance the current analogies.

1.5. Protection of musical performers in the Greek legislation

Although matters of copyright were first introduced and provided in the early Penal Code of 1835, in the newly established modern Greek State, it was in the beginning of the 20th century that special Acts were launched to address issues of copyright: Law No. 3483/1909 for dramatic works and Law No. 2387/1920, that, as already mentioned³⁰, was a torchbearer and very innovative in matters of performers’ rights. The law of 1920 was valid, with all his amendments and supplements, until the current Law 2121/1993 came in force in 1993. It is a fully detailed and unambiguous legal text, that implements all the EU (EC) directives in the field of copyright and related rights, and continuously updated with amending legislation, complying with the international and European provisions on copyright, digital agenda and related rights. Further more, matters of performers’ rights may be regulated by other branches of law and subsequent legal texts, such as the Penal Code, the Civil Code and the law of Unfair Competition.³¹

³⁰ See, §1.1, *supra*.

³¹ Koumantos, George, and Irini Stamatoudi. *Greek Copyright Law*. Athens-Thessaloniki: Sakkoulas, 2014. Print. p.18-20.

2. Performers' rights

2.1. General

The Greek Copyright Act grants performers both economic and moral rights. The performers' rights are regulated in the eighth chapter of the Greek Copyright Act, Law No.2121/1993, articles 46, 49, 50, 52, 53. Also, in the ninth chapter, which regards collecting societies, the provisions are applied *mutatis mutandis* for performers, as well as in the tenth chapter which regards measures to prevent infringements. Some other copyright provisions are also applicable *mutatis mutandis* to performers' rights such as the transferability of economic and moral rights of article 12 and 16, the limitations applicable to the economic rights regulated in the fourth chapter shall apply to performers' rights³².

A basic prerequisite in the protection of performers is the existence of a specific "work" to be the subject of the performance, as is the wording of the legal text³³, which provides the definition of the term "performer"³⁴. What constitutes a "work" suitable for protection is defined in the article 2. It is self-evident, although it has previously preoccupied the jurisprudence, that improvisations are considered "works", since the law does not require a work to be pre-existent or created on the spot.

Another basic dictate in the Copyright Act is that every agreement a performer concludes must be in writing³⁵. The written form is a prerequisite for the validity of

³² as indicated in article 52b.

³³ Law 2121/1993, article 46 (1).

³⁴ Law No.221/1993,Article 1 reads: "*The term 'performers' shall designate persons who in any way whatsoever act or perform works, such as actors, musicians, singers, chorus singers, dancers, puppeteers, shadow theatre artists, variety performers or circus artists.*"

³⁵ Law 2121/1993, article 52a, in analogy with article 14.

the contracts that regard the transfer of economic rights, the exploitation licences and the exercise of moral rights. Although this is a diversion of the general rule of legal transactions that require no specific form³⁶, in this circumstance it has been deemed that the performer, being the vulnerable party in those lines of deals, would be better protected against the uncertainty of oral agreements.³⁷

It is self-evident that a performer should be a physical person. In cases when more than one performer contributes to the performance, the Copyright Act prescribes that the whole of the ensemble will appoint in writing a representative to exercise the economic rights.³⁸

These rights are also un-transferable and unwaivable, with the exception of their transfer to a collecting society, as the Law provides in articles 54-58³⁹. Their duration (before the entering in force of the EU Directive 2011/77/EU⁴⁰ that, in certain cases, augmented the protection to 70 years) was provisioned for 50 years, after the event that triggered the protection.⁴¹

The Act is explicit that in cases where a performers' right is in conflict with copyright, the latter has more power and is not prejudiced by it.⁴² The greek courts have ruled on the occasion, and denied injunction to a famous greek folk singer who wished to stop the circulation of a fixation of his performance given at a concert, where he, among others sang the works of a famous composer. He pleaded that his economic and moral rights were infringed over the fact that he did not give his consent for the final mix of the recording, in which his voice had been altered, and another singer's voice was doubled on it. The court, although recognised his rights as a performer, rejected his application for injunction⁴³ on the basis of the explicit

³⁶ Greek Civil Code arts.158 & 361.

³⁷ Koriatopoulou-Aggeli, Pierrina, and Charis S. Tsigkou. *Πνευματική Ιδιοκτησία, Λημματογραφημένη Ερμηνεία (Pneumatiki Idioktisia Lemmatografimmeni Ermineia)*. Athens: Nomiki Bibliothiki, 2008. p.159.

³⁸ Law no.2121/1993, Article 46(4).

³⁹ Law no.2121/1993, Article 46(5).

⁴⁰ Directive 2011/77/EU (amending Directive 2006/116/EC on the term of protection of copyright and certain related rights) Article 2.

⁴¹ See *infra* under 2.3.

⁴² Law No.2121/1993, Article 35.

⁴³ Court of First Instance, Athens: Decision 34165/1998 ΜΠΡ ΑΘ 288199 (Nomos).

provision of article 53 on the predominance of the author's right over the performer's one.

Nonetheless, when copyright and related rights co-exist in the same person's powers, then their exercise is parallel and separate.⁴⁴

2.2. Economic rights

As far as economical rights are concerned, the Law, in article 46(2) provides an exhaustive list of those uses that the consent of the performer is required. The rights described are absolute and exclusive, granting total authority to the performer in both affirmative ("to authorise) and negative ("to prohibit") form. The performers have the right to authorise or prohibit the recording of their performances and in the case of an illegal recording, its broadcasting or distribution. In the case of a legally made recording of a live performance, the performer is granted an equitable remuneration. More specific, the acts that the performer can prohibit or authorise are:

The *fixation* of a live performance⁴⁵, the direct or indirect *reproduction*⁴⁶, the *distribution to the public*⁴⁷ of this fixation, by sale or other means (in forms of recordings, CD's, MP3's and in general, the distribution of a fixation in a solid material or in any known or unknown technological medium), as well as the *rental or public lending* of the fixation⁴⁸, the *radio and television broadcasting or re-broadcasting* by any technological means⁴⁹, (except when it is a rebroadcasting of a legitimate

⁴⁴ Law No.2121/1993, Article 35.

⁴⁵ Law 2121/1993 Art. 46(2)a.

⁴⁶ Id. Art. 46(2)b reads: "*The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, concerning the fixation of their performance*".

⁴⁷ Id. Art. 46(2)c: "*the distribution to the public of the fixation of the performance, by sale or other means (...)*".

⁴⁸ Id. Art. 46(2)d: "*the rental and public lending of the fixation of their performance(...)*".

⁴⁹ Id. Art. 46(2)e: "*the radio and television broadcasting of the illegal fixation by any means, such as wireless waves, satellites, or cable as well as the communication to the public of a recording with an illegal fixation of their live performances*".

broadcasting⁵⁰), the *communication to the public*⁵¹ and the *making available to the public*⁵².

Some points that require clarification, although they are included in the letter of the law are:

- whereas the consent is given for the first fixation, it does not expand in the reproduction, distribution or communication to the public, for each one of which special authorization is needed.

- direct reproduction is the one made out of the live performance in a solid medium (record) or in digital form, or in any other form. Indirect reproduction is considered the one made out of a broadcasting of the live performance.

- the term “public” designates a circle of persons other than family members and the immediate social circle of the performer, in analogy to article 3(2). Moreover, the public can be in different places at the time the communication takes place.

Synopsizing, we can distinguish the following circumstances:

- a. In case of a “live” performance:

- i) If the performer has not given his consent the fixation of a live performance constitutes an illicit recording for which the performer has the right to prohibit its reproduction, its distribution, its communication to the public, its making available to the public and its broadcasting. Since the right is absolute, every infringement upon it is a criminal offence. ii) If the fixation is authorised by the performer, he has the right of equitable remuneration for every time this fixation is being reproduced, broadcasted, re-broadcasted and communicated to the public by any means and in any form.

⁵⁰ Id. Art.46(2)f: “the radio and television broadcasting by any means, such as wireless waves, satellites, or cable, of their live performance, except when the said broadcasting is rebroadcasting of a legitimate broadcasting”.

⁵¹ Id. Art. 46(2)g: “the communication to the public of their live performances made by any means other than radio or television transmission”.

⁵² Id. Art. 46(2)h: the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.(...).

b. in case of a lawfully made recording:

If a performer has entered into a contract with a phonogram producer to record a performance with the scope to produce recordings for commercial use, then he has the right of equitable remuneration every time the recording is used commercially (in the means of being reproduced, broadcasted or communicating to the public in uses that are not excluded by law). The collection of this equitable remuneration can be administered by collecting societies and the revenues will be shared between the producer and the performer.

The right to equitable remuneration (for radio or television broadcasting or re-broadcastings) regulated in Article 49 is payable only to collecting societies, which in turn are responsible for agreeing the remuneration sums with the users. This is not a transfer of the right, but a compulsory assignment of their administration to collecting societies, which makes it more practical and effective. Besides that, the right to equitable remuneration cannot be assigned to third parties⁵³.

A very interesting case that comprises many aspects of neighbouring rights is the following⁵⁴: The plaintiffs, musicians of a State Orchestra (legal entity of the public sector) filed a lawsuit against the City's Concert Hall Organisation, and a State Television Broadcasting Company, on the grounds of an alleged infringement of their performers' rights. The Orchestra had undertaken, in contract with the Concert Hall organisation, the task to perform the music part of Bizet's opera "Carmen" for a number of performances during the fall of 2001. The plaintiffs became related rights holders, from the moment of their participation in the performances. Exercising their economic rights, through their legal representative, as indicated in Article 46(4), they granted their consent, in writing, to the Concert Hall Organisation for an audiovisual recording of one performance, strictly for archival use, with no additional fees. The Concert Hall, intentionally ignoring the agreed purpose of the performance's fixation, reproduced it and transferred it to the Broadcasting Corporation, which in its turn,

⁵³ Law No.2121/1993 Article 49(1)&(2).

⁵⁴ Court of First Instance, Thessaloniki 21160/2004 Court of Appeals 43.824/10/12/2003 Supreme Court ΑΠ 670/2007.

without the musicians' consent, reproduced in a broadcasted television emission a lengthy excerpt of the performance in question. Interesting legal matters:

1. Is it a case of related rights or a case of labour dispute of the Civil Code? The courts ruled that, even though the performers were public employees, and given that, there is a provision in the Copyright Act that refers to the immediate *–ipso jure*-transfer of copyright “on works created by employees under any work relation of the public sector or a legal entity of public law in execution of their duties (...)”⁵⁵, such analogy abides also with related rights holders, but due to the compliant character of the provision, it rests to the will of the parties to decide on which rights be transferred. So in this case, the *ipso jure* transfer of rights from the musicians to the Orchestra comprised only those economic rights that were necessary to fulfil the purpose of the contract, namely the exploitation of the live performance and the communication to the public, leaving out the right of fixation and reproduction of the performance.

2. The plea of the second respondent, the Broadcasting Organisation, that the excerpt of 12 minutes used in the emission was not substantial and that its use could not constitute infringement, because it was made for the promotion and publicity of the Orchestra out of journalistic duty, was overruled by the fact that the absolute right to prohibit the reproduction of the performance refers either to the whole or to any part of it.

2.2 Moral rights

The greek copyright law recognises moral rights to authors and performers⁵⁶. In fact, for performers, the moral right has only recently been attributed, with its introduction on the WIPO Performances and Phonograms Treaty of 1996. Up until then the Rome Convention and the relevant International Treaties were not explicitly referring to the moral right of performers, mainly due to the different regards between the anglo-saxon and the continental legal systems: while the common law countries (mostly UK and USA) were more oriented towards the protection of the object, of the “work” in intellectual property, the continental Europe expressed the consideration for the person -the author or performer- that put the intellectual effort

⁵⁵ Law No.2121/1993 Article 8.

⁵⁶ Law No.2121/1993 Articles 4, 50 respectively. See also Article 16.

into the work. The national legislations mirrored this difference in perspective, and international treaties did not wish to put an edge to that. The journey for a universal institution of a moral right started from jurisprudence rather than from legislation. It was based on the need to attribute a right of personality to performers that would maintain the legal link between the artist and the work/performance, even after the work had been released from his economic control. It is believed that this link cannot be overridden by any transfer of his economic rights. The authors' moral right, as described first in the legal text of the Berne Convention⁵⁷ comprises the right of paternity and integrity:

"Independent of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, modification of, or other derogatory action in relation to the said work, which would be prejudicial to the author's honor or reputation."

Through the evolvement of copyright law, the moral right for authors, now, comprises three more different aspects than those provided in the Berne Convention, the right of accessibility, the right of publication and the right of rescission. Evidently, when music performers are concerned, only the right of paternity and integrity can be exercised, because of the nature of the link of the musician to his performance. It is very important to attribute the performer, his name and personality, when a recording is heard over the radio for example. The performer demands the audience's applause, and this a good reason to be exigent so that his name is heard. And, since the performance is part of his own "work", his personal "piece of art", he certainly does not want it altered, disfigured, cut or distorted.

As far as the right to change his mind over a recording: even though the moral right to rescission is reserved for authors of literary and scientific works⁵⁸, it should be applicable to performers, as well, under the following justification: a performer should be able to decide if a recording, made at a certain period of his career, still continues to bear his personal seal and represent him in the face of his audience and fans as an

⁵⁷ Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886.

⁵⁸ Law No.2121/1993 Article 4e.

accomplished artist, or, if this recording, having now passed below his current elevated standards, stays as a burden to his artistic involvement.

Contrary to most Anglo-Saxon countries' legislation, which, as mentioned before, traditionally greets copyright law under a more work- oriented prism, in Europe, the moral right is inalienable and unwaivable. The greek copyright law has implemented this theory and grants the performer a moral right on his performance that cannot be waived or transferred during his life⁵⁹. Of course, in reality, although a total waive of rights is not acceptable, the performer partially waives this right every time he concludes a contract and agrees upon a certain use of his work. For example, he may agree on omitting a part of his performance when that exceeds the total set duration of the recording; that may seem as a waiver of the moral right of integrity, but as long as the core of the right remains intact, it is acceptable by law.⁶⁰

What happens if there is more than one performer to exercise their moral right? In analogy to the provision on moral rights of authors⁶¹, the exercise of the moral right of paternity will take place "to the extend that it is possible".

The exercise of moral right is extenuated⁶² if the consent of the performer has been granted for an action or omission that would otherwise constitute an infringement of this right.

The moral right of performers can pass on to their heirs, *mortis causa*, and even then, the heirs must abstain from exercising this right in ways against the late artist's expressed will.⁶³ In fact, there is a case law decision, according to which, rightfully, the heirs of a musician refused to allow the public performance of his music, due to the possibility of alterations from their mix with other sources of music, a fear that the deceased had expressed with strong dismay during his lifetime⁶⁴. Therefore

⁵⁹ Law No.2121/1993 Article 50.

⁶⁰ Stamatoudi, Irini A.,and Paul Torremans. *EU Copyright Law: A Commentary*. Cheltenham, UK Northampton, MA, USA: Elgar, 2014. Print., p.1139.

⁶¹ Law 2121/1993, Article 4(1).

⁶² according to Law 2121/1993, Article 16.

⁶³ Law No.2121/1993 Article 50 in relation to12(2).

⁶⁴ Court of First Instance Athens Decision 5743/2000 (Nomos).

the duration of the moral right extends for their lifetime and the lifetime of their immediate heirs.⁶⁵

2.3 Duration – The Term Directive 2011/77/EU

We have often referred to how rapidly the scenery in music industries changes, due to the immense progress in technological means regarding recording methods and new digital mediums. Music can now be reached any time, any place, by nearly anyone. This is why a reconsideration of the term of protection for performers in general, and especially for musicians took place the last few years in the EU. The result was the introduction of a Directive that, among other changes, amended the term of protection.

Greek legislature harmonized (as amended with article 4 of Law 4212/2013) the Copyright Act with the changes that the recent Term Directive has brought to the field of related rights. The important thing for musicians is that, in certain cases the term of protection has been augmented from 50 to 70 years. In particular: the rights of performers shall still, as a general rule, expire 50 years after the date of the performance, but, especially when it regards a “phonogram”: if a fixation of a phonogram is lawfully published or communicated to the public, this term extends to 70 years after the date of this first publication or communication to the public⁶⁶. For practical reasons, the term is calculated from the January 1st of the year following the event that triggered the protection.

The Directive refers to “phonogram”, which excludes from the provision the performers of other forms of art, such as actors, but also it seems that it excludes also the music performers whose performances are not fixed in a phonogram, as is the case in a cinematographic or audiovisual work.⁶⁷

The Directive also introduces a higher level of protection for music performers, in the form of the “use it or lose it” clause, against the stagnancy of record producers.

⁶⁵ Koumantos, Georgios. *Pneumatiki Idioktisia: Nomos 2121/1993:Eksynchronismeni Kodikopoiesi*. Athens: Ant.N. Sakkoula, 2002. Print. p.418.

⁶⁶ Directive 2011/77/EU Art.1.

⁶⁷ See Stamatoudi, Irini A., and Paul Torremans. *EU Copyright Law: A Commentary*. Commentary: Duration of Related Rights. Extended Terms for Performers and Producers of Phonograms pp.265-271.

It gives the music performer the right to terminate a contract with a producer, if the latter does not take the necessary steps to circulate the recording in the market.⁶⁸

2.4. Licenses and Contracts

Of the performers' rights, neither the economic rights nor the moral right may be transferred between living persons.⁶⁹

If not otherwise stated in a contract, a performer who has undertaken an employment contract, is presumed to have authorized all of the acts referring to economic rights stated in the art.46(2) for the completion of his contract. Nevertheless, he, in any case, retains the right to equitable remuneration for his performance.⁷⁰

Greek legislation does not favor compulsory licenses, as it is reasoned to disproportionately restrain the absolute and exclusive nature of performers' rights.⁷¹

⁶⁸ Directive 2011/77/EU Art.2a.

⁶⁹ Law 2121/1993 article 46(5).

⁷⁰ Id.article 46(3).

⁷¹ Koriatopoulou-Aggeli, Pierrina, and Charis S. Tsigkou. *Πνευματική Ιδιοκτησία, Λημματογραφημένη Ερμηνεία (Pnevmatiki Idioktisia Lemmatografimmeni Ermineia)*. Athens: Nomiki Bibliothiki, 2008. p.21

3. Infringement of music performers' rights

3.1. Acts of infringement-Limitations and exceptions

Performers' rights may be infringed in many ways. As far as the economic rights of the performer are concerned, every person who undertakes any of the acts described exhaustively in Article 46 of the Greek Copyright Act, without the consent of the performer, is committing an act of infringement. More specifically, acts of infringement are:

- the recording (fixation) of a live performance without the performer's authorization, or against his explicit prohibition
- the reproduction of the whole or part of the fixation of this performance without the performer's consent
- the sale, public lending or rental of this performance without the performer's consent
- the radio or television broadcasting of the illegal fixation of the performance without the performer's consent
- the radio or television broadcasting of the live performance without the performer's consent
- the communication to the public of a live performance without the performer's consent, or of a recording of a live performance taken illicitly
- the making available to the public of a live performance without the performer's consent

An interesting example taken from case law⁷² as of the limits between private use and communication to the public is the following: the Supreme Court accepted a petition for cassation for a previous Court of Appeals' decision, who ruled that a hotel room does not consist public space, and thus, the reception of a broadcasted emission, containing protected works, from the television post situated in the hotel room does not qualify as public performance, due to the private nature of the normal use of a hotel room. The Supreme Court deemed that this decision conflicts with the provisions of the Copyright Act and the WIPO treaty, as implemented in Greece with Law No.3184/2003, that prescribe that authors and performers have exclusive right to authorize or prohibit every communication or making available to the public of their work.

The performer's consent is not needed in some cases, stated in the Law and which constitute limitations of the performers' right. Thereupon, the person who commits these acts, does not infringe any rights. The limitations that the Copyright Act provides for are applied in analogy to copyright⁷³, and are only valid when there is no conflict with the normal exploitation of the performance. The implementation of the three-step-test first introduced in the Berne Convention⁷⁴, and subsequently entered the TRIPS agreement and the WIPO Treaties, is provided by the greek Copyright law, and expands its implementation for performers rights, as well⁷⁵. The three-step-test often operates as a restrain in the range of the permitted acts listed in the Law and as an umbrella, under which these limitations of rights justify the free use of the works otherwise protected. Under this test, three prerequisites must be met, in order for an act to be allowed without the right holder's consent: firstly, that there exists a special circumstance that justifies the use, secondly, that the use must not conflict the normal exploitation of the work and thirdly, that the use must not prejudice unreasonably the legitimate interests of the right holder⁷⁶.

⁷² Supreme Court Decision 649/2013 ΑΠ (Nomos).

⁷³ Law No.2121/1993 Article 52b.

⁷⁴ Berne Convention art. 9(2).

⁷⁵ See articles 18(3), 20(2)&(3), 21(3), 28(3)and 43(3) of Law No.2121/1993.

⁷⁶ Id. article 28C.

The permitted acts are explicitly and exhaustively stated in the Law, and in the case of musical performances are:

- reproduction for private use (such as making copies of a lawfully acquired recording on recordable tapes or CDs; the Law provides an equitable remuneration in the form of “blank tape levies”, paid by the importers of such recording devices and collected by collecting societies to be distributed to beneficiaries performers on a 25% basis)⁷⁷
- reproduction for teaching purposes⁷⁸ (an extract of a recording of a live performance may be used for educational purposes in music schools, conservatories etc.)
- public performance on special occasions (such as national holidays, official ceremonies, school events, provided that the public is a narrow cycle of students, their parents and persons directly connected with the educational establishment)⁷⁹
- use of a recording of a performance while reporting news or giving information for current events⁸⁰

3.2 Enforcement and Sanctions

Once an infringement has been established, it must be remedied. The Law provides civil, administrative and criminal sanctions. It also provides injunction and preliminary measures in case of alleged or threatened infringements and preventing technological measures for discouraging and disheartening aspiring infringers.

Administrative Sanctions⁸¹

Especially for phonograms (and computer software) the Law 3524/2007 who harmonized the greek legislation with the Directive 2004/48, introduced the payment of administrative fees as an alternative to prosecution for minor offences (up to 500 physical carriers). This practice helps ‘decongest’ the penal courts and at the same time dishearten the infringers, since it sets the sum to be paid at a minimum of 1000

⁷⁷ Law 2121/1993 article 18(3).

⁷⁸ Id. article 21.

⁷⁹ Id. article 27.

⁸⁰ Id. article 25.

⁸¹ Id. Article 65A.

Euros⁸². If the infringer regresses within a year, the administrative fee doubles. Competent authorities for the control and the enforcement of the above provision are the Police and Custom authorities and the Unit of Special Controls of the Ministry of Finance.

Civil Sanctions⁸³

The right holder, in case of infringement has the right to ask for a cease and desist order. Since the offence is turned upon an absolute right, if it is done intentionally it constitutes a tort, according to the relevant provisions of the Civil Code on tortuous liability. In case of tort, he is entitled to compensation for moral damages. Instead of asking damages, he can also support his case, subsidiary, with the provisions for unjust enrichment.⁸⁴

The civil sanctions of article 64 are applied also in the case the debtor did not pay the levies of article 18 to the collecting societies.

An interesting legal matter concerning the protection of performers' rights is the possible application of the provisions of unjust competition in commerce law, in addition to the legal protection of Copyright Law. At first, since copyright law constitutes a special regulation for the protection of copyright and related rights, its implementation excludes the protection of the same nature of rights under different provisions. In some cases, though, the added implementation of the provisions of Law No.46/1914, under the prerequisite that the offence is unjust and against the morals of transactions in the commercial field, can be justified. Contrary to the copyright law, which turns its protection towards the work, the authors, and the performers, the provisions for unjust competition imposes on traders the observance of a certain comportment in transactions that, if kept, cannot lead to infringements of rights. Nevertheless, the protection of copyright law is more complete, and thus more desirable, and the assistance of unjust competition provisions may serve only in circumstances that the Law 2121/1993 can no longer protect (as in the court decision that ruled for the continuation of protection of phonograms under the provisions

⁸² The fee is calculated at 20 Euros for every physical carrier.

⁸³ Law No.2121/1993 Article 64.

⁸⁴ Greek Civil Code art. 904*subs.*

against unjust competition, when the term protection of the Copyright Act has expired.)⁸⁵

Criminal sanctions⁸⁶

Acts of infringement of economic rights of performers constitute criminal offences. As far as moral rights are concerned, limited criminal protection is given to acts of infringement of moral right of integrity and paternity. In their basic forms, the offences against related rights for performers are considered misdemeanors and they are sanctioned with imprisonment no less than one year and a fine of 2.900-15.000 Euros. If the act is particularly great the imprisonment may be up to 2 years. If the imprisonment is imposed with the option of redeemability, the sum payable for the redemption shall be 10 times the sum specified as per the case in the Penal Code. The offence is converted to felony, if the infringer acts professionally in a commercial scale.

Preventing Measures

The law provides that with the recommendation of the Minister of Culture presidential decrees can regulate preventing methods of possible infringements, such as imposing technological specifications in equipment and material used for reproductions⁸⁷, setting compulsory control systems designating works and the frequency of their use⁸⁸, imposing the use of a specific label on the records and phonograms, issued by the respective collecting society that has licensed the use, which certifies that the circulation of the aforementioned recording does not constitute an infringement.⁸⁹

⁸⁵ Court of First Instance, Athens Decision 15202/1994.

⁸⁶ Law No. 2121/1993 Article 66.

⁸⁷ Id. article 59.

⁸⁸ Id. article 60.

⁸⁹ Id. Article 61.

4. Collecting Societies

4.1 The function and operation of Collective Management Societies

The foundation of collecting societies emerged when it was already practically impossible for the author or the performer to follow the exploitation of their work. The administration or management of copyright and related rights by a large number of owners forming a society or organization was the more practical way of collecting and distributing royalties among their members. For literary works, these kinds of societies existed already from the 18th century. For music, the first collecting society was formed in France in 1850.

It is true that, while a performer can individually negotiate and enter in agreements for matters that apply on the exploitation of his live performance, or his contract with record producers (e.g. his performance fees, the revenues out of the private sale of recordings, etc.), practically it is impossible for him to seek out every broadcasting station, or every institution of public interest that makes use of his recorded performance and ask for the remuneration he is entitled to by law. This difficulty is enhanced especially in the recent days, when the making available to the public has become so easy, when on the internet the spread of information is so rapid and recordings can go viral in a matter of seconds, so, consequently, the artists' control can easily be out of track.

So, with an effective mechanism and operation, Collective Management Societies undertake the task to negotiate with the users the terms of use of the works in their "repertoire" (works that they protect on behalf of the right holders), to negotiate the fees and issue licenses, as well as collect royalties and distribute them

among their members/right holders. Especially in the music domain, in the digital environment, this task is getting more challenging. Another factor that complicates their function is the discrepancy between the territorial nature of national copyright laws and the multi-territorial nature of internet. For these reasons, for the last decade in EU⁹⁰, it has been deemed imperative to work out an effective, facilitating and cross-border protection that led to the Collective Rights Management Directive 2014/26/EU⁹¹. Although it has not yet come out officially, the Directive objectives are “to improve the way all collective management organizations are managed by establishing common governance, transparency and financial management standards; to set common standards for the multi-territorial licensing by authors' collective management organizations of rights in musical works for the provision of online services; and to create conditions that can expand the legal offer of online music.”⁹²

Greek law regulates the forming and operation of collecting societies under a separate chapter of the Copyright Act.⁹³ The law allows the establishment and operation in any legal form of company status⁹⁴. The Minister of Culture, after examining the company statement and the governing rules of the collecting society organization, that the latter is obliged to depose, grants his approval for the society's operations. The Minister of Culture also monitors the operations of collecting societies and has the powers to revoke the authorization of operation, if he notices serious or repeated violation of the law.

The collecting society then acts by a title of transfer of the economic rights of the right holder, or by grant of power of attorney. The agreement establishing the title must be in writing, can last no more than three years and must specify in detail the works under protection. A presumption is introduced, that in case of ambiguity, the protection expands to all the works of the right holder, even those that will be created during the run of the term of agreement.

⁹⁰ see the Recommendation 2005/737/EC on collective cross-border management of copyright and related rights.

⁹¹ Stamatoudi, Irini A., and Paul Torremans. *EU Copyright Law: A Commentary*. Cheltenham, UK Northampton, MA, USA: Elgar, 2014.

⁹² European Commission Press Release Database at europa.eu.

⁹³ Law No.2121/1993 Ninth Chapter Arts.54-58.

⁹⁴ Id. article 55(1).

The competence of collecting societies is described in the Copyright Act in Article 55 and comprises the following functions:

- concluding contracts with users and negotiating the percentage fee and the remuneration fees

- collecting the remuneration and distributing among authors and related rights holders

- collecting the remuneration of private copying levies of article 18 and allocating it among authors

- undertaking all necessary tasks to secure the legal protection of the authors and related rights holders, namely taking court actions, serving writs, and filing lawsuit as plaintiffs and request seizure of unlawful copies

- checking in collaboration with public authorities the sale, rental and lending of copies of the works under their protection

An assignment of the administration of rights from a rights holder to a collecting society is not mandatory, with the exception of these three circumstances, when the assignment is compulsory by law: a)for the collecting of the private copying levies of article 18 for both authors and related rights holders, b)for the collection of equitable remuneration only for related right holders (performers and record producers) for the broadcasting or communication to the public of the fixation of the performances and the recordings⁹⁵ and c)for the administration over secondary transmissions of radio and television programs only for authors.

The Law regulates the relationship of a collecting society with the users of the works that are protected under its administration of rights (article 56). They have no right to refuse to conclude a contract with a user, unless they provide a good reason

⁹⁵ Law 2121.1993 article 49.

for this refusal⁹⁶. If there is a disagreement over the remuneration, it can be resolved by resorting to a court of first instance, or arbitration⁹⁷.

The Law introduces a presumption of competence of collecting societies, for the facilitation of the administration of rights, according to which it is presumed that the collecting societies have the power to conclude contracts with users, collect remuneration fees and proceed in legal actions for all the authors and right holders and for all the works that they declare in writing as having under their protection⁹⁸.

Furthermore, special provisions in Article 57 regulate the relationship of collecting societies with authors, on matters as the determination of levels of remuneration, the methods of the collection, the times of distribution of remuneration, the percentage of the remuneration withheld by the collecting society to cover the expenditures of their actions, the way to abrogate, if needed, the agreement. Although article 57 refers to “authors”, the provision of article 58 makes it applicable *mutatis mutandis* to the administration of related rights, as well.

An interesting matter in case law is the existence of two different rulings on whether the demand for equitable remuneration is raised from the moment the collecting society asks for it, or is it due from the time that the Law 2121/1993 entered into force.⁹⁹

4.2. Equitable remuneration

The equitable remuneration provided for music performers, as aforementioned, is a form of a fee payable to the related rights holders in those circumstances when their work is being lawfully used but without their consent. Apart from the private copying levy¹⁰⁰, an equitable remuneration is provided for broadcasting, re-broadcasting and communication to the public either of a live performance and/or its fixation, or for the use of legal recordings. It is true that, for practical reasons it is not possible to acquire the consent of a music performer every

⁹⁶ Id. article 56(2).

⁹⁷ Id. art. 56(2&3).

⁹⁸ Law 2121/1993 article 55(2).

⁹⁹ Court of First Instance Athens 3860/2001, ΕΕμπΔ 2001, 790 and Court of Appeal Athens 551/2005 ΔΕΕ 2006, 274.

¹⁰⁰ Law 2121/1993 article 18.

time the fixation of their performance is heard over the radio, television or in a public recreation room, such as restaurants, bars e.a. It is presumed that, as long as the performer has agreed to publish his performance and since the work has circulated in the market, the grant of his initial consent to bring the work before the public is abiding and standing, so the equitable remuneration is a justifying means to redeem him for this imposed restriction¹⁰¹ on his absolute right. The law protects the performer, regarding this matter, by not allowing the transfer of the right to equitable remuneration to third parties; even when the related rights holder has assigned exclusive licenses to these third parties, the right to equitable remuneration remains strictly to the performer.¹⁰²

The collecting societies are the only entities, as far as performers' rights are concerned, to collect from the users the equitable remuneration due, and render it to the rightholders. The collecting societies keep an updated published table of tariffs for the equitable remuneration payable by the users. Since the tariff-setting is done unilaterally by the collecting societies, the users may, in case of disagreement, seek for a court judgment by the competent court to decide on the final amount to be paid for every use. In the mean time and until the court's decision, the aspiring users shall pay before any use either the sum requested, or an amount determined by interim measures by the Court of First Instance.¹⁰³ Alternatively, the disputes over the remuneration sums can be referred to arbitration.¹⁰⁴

¹⁰¹ In the theory this has been considered as a form of compulsory license. See also: Koriatopoulou-Aggeli, Pierrina, and Charis S. Tsigkou. *Πνευματική Ιδιοκτησία, Λημματογραφημένη Ερμηνεία (Pneumatiki Idioktisia Lemmatografimmeni Ermineia)*. Athens: Nomiki Bibliothiki, 2008. Print. pp.22, 239.

¹⁰² Law 2121/1993 article 49(2).

¹⁰³ Id. article 56.

¹⁰⁴ Id.

Conclusion

Conclusively, having seen a general overview of the greek Copyright Act, we focused on the main legal matters that affect related rights and specifically those provisions that apply for the performers in music. It is largely admitted that the greek legislation for copyright and related rights is one of the most complete, concrete and detailed legislations, based on solid principles from the legal theory. My personal hope is that the margin, that is now present in copyright law between the creative artistry and the interpretative artistry, will eventually close. The wager that must be won is to protect as many aspects of the greek intellectual output, so as to give more incentives for a fruitful artistic and intellectual movement within our country and abroad.

Bibliography

Bibliography and works cited

Adorno, Theodor. "Quasi Una Fantasia: Essays on Modern Music." Transl. Rodney Livingstone. *SubStance* 24.3 (1995): 121. Web.

Arnold, Richard. *Performers' Rights*. London: Sweet & Maxwell, 2008. Print.

Brendel, Alfred. *Musical Thoughts & Afterthoughts*. London: Robson, 1976. Print.

BusinessDictionary.com -Online Business Dictionary. Web. 24 Jan. 2015.
<<http://www.businessdictionary.com>>.

Gillespie, Susan. "Translating Adorno: Language, Music, and Performance." *The Musical Quarterly* 79.1 (1995): 55-65. Web.

Gould, Glenn, and Bruno Monsaingeon. *Non, Je Ne Suis Pas Du Tout Un Excentrique*. Paris: Fayard, 1986. Print.

Guide to the Rome Convention and to the Phonograms Convention. Geneva: World Intellectual Property Organization, 1981. Print.

Khan, M. A. *Principles and Perspectives of Copyrights*. New Delhi: Sarup & Sons, 1996. Print.

Koriatopoulou-Aggeli, Pierrina, and Charis S. Tsigkou. *Πνευματική Ιδιοκτησία, Λημματογραφημένη Ερμηνεία (Pnevmatiki Idioktisia Lemmatografimmeni Ermineia)*. Athens: Nomiki Bibliothiki, 2008. Print.

Koumantos, George, and Irini Stamatoudi. *Greek Copyright Law*. Athens-Thessaloniki: Sakkoulas, 2014. Print.

Koumantos, Georgios. *Pneumatiki Idioktisia: Nomos 2121/1993: Eksynchronismeni Kodikopoiesi*. Athens: Ant.N. Sakkoula, 2002. Print.

Kyprouli, Konstantia P. *Το συγγενικό δικαίωμα των ερμηνευτών εκτελεστών καλλιτεχνών (Related Rights of Performers)*. Athens-Thessaloniki: Sakkoulas, 2000. Print.

"Oxford Dictionaries." *Oxford Dictionaries*. Oxford University Press, 2015. Web. 23 Jan. 2015.

Solomon, Larry J. "The Sounds of Silence." 4'33" N.p., 1998, rev. 2002. Web. 25 Jan. 2015.

Stamatoudi, Irini A., and Paul Torremans. *EU Copyright Law: A Commentary*. Cheltenham, UK Northampton, MA, USA: Elgar, 2014. Print.

Stamatoudi, Irini, and George Koumantos. *Greek Copyright Law*. Athens-Thessaloniki: Sakkoulas Publications S.A, 2014. Print.

Stravinsky, Igor. *Mousiki Poiitiki*. Athens: Nefeli, 1980. Print.

SOURCES (Legal Texts- Legislation-Case-Law)

Greek Legislation:

Law 2121/1993 Copyright, Related Rights and Cultural Matters (Greek Official Journal ΦΕΚ Α' 25/1993)

Law 2557/1997 on Institutional Measures and Actions of Cultural Development (Greek Official Journal ΦΕΚ Α' 271/1997)

Law 100/1975 Ratification of the Convention establishing the World Intellectual Property Organization adopted on July 14, 1967 and b) the Revision of the Berne

Convention for the Protection of Literary and Artistic Works on July 24, 197, Paris
(Greek Official Journal ΦΕΚ Α' 162/01.08.1975)

Law 1944/1991 Ratification of the Brussels Convention Relating to the Distribution of
Program-Carrying Signals Transmitted by Satellite (Greek Official Journal ΦΕΚ Α'
5622.04.1991)

Law 2054/1992 Ratification of the International Convention for the Protection of
Performers, Producers of Phonograms and Broadcasting Organizations of October 26,
1961 at Rome (Greek Official Journal ΦΕΚ Α' 104/1992)

Law 2148/1993 Ratification on the Convention for the Protection of Producers of
Phonograms Against Unauthorized Duplication of Their Phonograms of 29 October,
1971 at Geneva (Greek Official Journal ΦΕΚ Α' 96/1993)

Law 3183/2003 Ratification of the WIPO Performances and Phonograms Treaty (Greek
Official Journal ΦΕΚ Α' 227/2003)

Law 3184/2003 Ratification of the WIPO Copyright Treaty (Greek Official Journal ΦΕΚ
Α' 228/2003)

EU Legislation :

Directive 2011/77/EU on the term of protection of copyright and certain related rights
(also : Directive 2006/116/EC-Council Directive 93/98/EEC)

Directive 2014/26/EU on collective management of copyright

International Legislation:

Berne Convention for the Protection of Literary and Artistic Works (1886, last
amended 1979)

Brussels Convention Relating to the Distribution of Programme-Carrying Signals
Transmitted by Satellite (1974)

Phonograms Convention (1971)

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)

WIPO Copyright Treaty (Geneva, 1996)

WIPO Performances and Phonograms Treaty (WPPT) (Geneva, 1996)

Cases:

“Affaire Furtwaengler” Civ.Seine, 19/12/1953, J.C.P.1954 and Cass.Civ.4-1-1964, J.67

Court of First Instance, Athens: Decision 34165/1998 ΜΠΡ ΑΘ 288199 (Nomos)

Court of First Instance, Thessaloniki 21160/2004 - Court of Appeals 43.824/10/12/2003 and Supreme Court ΑΠ 670/2007

Court of First Instance Athens Decision 5743/2000 (Nomos)

Supreme Court Decision 649/2013 ΑΠ (Nomos)

Court of First Instance, Athens Decision 15202/1994

Court of First Instance Athens 3860/2001, ΕΕμπΔ 2001, 790 and Court of Appeal Athens 551/2005 ΔΕΕ 2006, 274

(all electronic data retrieved from the web between November 2014 and January 2015)